IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 17 OF 2005
WITH
CIVIL APPLICATION NO.12 OF 2005

Pundlik Padman Madhavi
(Since deceased through his LR's)
Smt.Yamuna Pundalik Madhvi & Ors. .. Appellants

V/s.

M/s.Raptakos Brett & Company
Ltd. & Anr. ..Respondents

Mr.S.M.Suryawanshi for the Appellants.
Mr.J.P.Avasia for Respondent No.1.

CORAM : R.M.SAVANT, J.
DATED : 18TH SEPTEMBER, 2008.

P.C.

This Second Appeal takes exception to the Judgment and decree dated 22nd July, 2004 passed by

the learned IIIrd Ad-hoc Additional District & Sessions Judge, Thane by which the Judgment and decree dated 27th February, 2003 passed by the learned Joint Civil Judge Senior Division, Thane came to be confirmed. The Appellants are the original Plaintiffs who filed Special Civil Suit No.28 of 1998 for declaration injunction and possession. It was the case of the Plaintiffs that the Plaintiff No.1 was owner of the land bearing Survey No.228 Hissa No.2 of village Majiwade, Taluka and District Thane. It was the case of the Plaintiffs that land bearing survey No.228, Hissa No.4 belonging to Respondent No.1 herein i.e. Defendant No.1 to the said suit was abutting the land of the Plaintiffs on the western boundary. It is the case of the Plaintiffs that some portion out of the said survey No.228 Hissa No.4 abutting the boundary of the Plaintiff's land was in possession of the Plaintiffs since 1965 to the exclusion of the Defendant No.1. It was the case of the

Plaintiff's that Plaintiff No.2 had constructed a single storeyed structure on the land bearing Survey No.228 Hissa No.2 as well as on the suit land bearing No.1 and the galas in the said structure were let out to various tenants for commercial use and that some of the galas were in use of Plaintiff No.2 and her husband. It was the case of the Plaintiffs that the said galas were constructed by the consent and permission of Respondent No.2 and that they are paying taxes to Defendant No.2.

2. It was further the case of the Plaintiffs that some where in the year 1990-91, Defendant No.1 i.e. Respondent No.1 herein had started construction of a compound wall to enclose their land which was behind the land of Plaintiff No.1. It was the case of the Plaintiffs that the Defendant NO.1 had tried to cover all the land that was lying behind the shops of the Plaintiffs for

which Plaintiff No.1 objected as it being the part of survey No.228 Hissan No.2 owned by the said Plaintiff No.1. The therefore Plaintiff No.1 therefore applied for the survey of the land and in the survey carried out by the D.I.L.R., the said land which the Defendant No.1 was trying to encroach was found to be a part and parcel of a survey No.228 Hissa No.2 . It is the case of the Plaintiffs that pursuant to the said survey, Defendant No.1 stopped the construction of the compound wall. It was further the case of the Plaintiff's that on or about 5th or 6th January, 1993, the Defendant NO.2 in the course of road widening of the Pokhran Raod No.1 demolished portion of the shops of the Plaintiffs, and that the Defendant No.2 Corporation started putting up kiosks to rehabilitate the persons affected by the road widening. Plaintiff No.1 therefore filed Regular Civil Suit No.82 of 1993 which is pending in the Court of the Civil Judge, Junior Division,

Thane.

3. It was the case of the Plaintiffs that in the first week of January, 1998, Defendant No.2 demolished two shops which work standing in the suit land No.1 let out by the Plaintiffs to the two tenants on the ground that the said shops were causing obstruction to the road widening of Pokhran Road No.1. It was the case of the Plaintiffs that Defendant No.2 demolished the entire structure of the Plaintiffs at the instance of Defendant No.1 who wanted to taken unfair advantage of the situation. It was the case of the Plaintiffs that prior to the demolition, Defendant No.1 had not given any notice either to the Plaintiffs or any other tenants of the Plaintiffs. The Plaintiffs have therefore filed the suit for the reliefs prayed for therein.

4. The Defendant No.1 appeared in the said

suit and filed its written statements. It was contended on behalf of Defendant No.1 that the Plaintiffs were occupying some portion of Survey No.228 Hissa NO.4 belonging to Defendant No.1 unauthorizedly and illegally and that the Plaintiffs had encroached the said portion in the year 1993 and even constructed on the said land without permission of the Defendant NO.2. The Defendant No.1 denied the suit land No.1 was in possession and enjoyment of Plaintiff No.1 since 1965 openly and in exclusion to the Defendant No.1 as alleged. Defendant No.1 denied it had encroached in the property of Plaintiff No.1 and contended that the Plaintiffs have not entitled to any of the reliefs claimed in the said suit.

5. Defendant No.2 also filed its written statement and contended that as per the draft development plan, the entire frontage abutting to Pokhran Road No.1 belonging to Defendant No.1 was

reserved for Road Widening Project. It was further stated on behalf of Defendant No.2 that the suit land No.1 was belonging to Defendant No.1 and that since the compound wall of Defendant No.1 was damaged, Defendant No.1 was applied for permission to construct the compound wall which was granted by the Defendant No.2 vide letter dated 11th July, 1996. The Defendant NO.2 also contended that admittedly, the Plaintiffs have carried out the construction without obtaining prior permission of the Plaining Authority i.e. the Defendant No.2 and therefore in the said circumstances for the purposes of road widening, no notice was required to be given to the Plaintiffs.

6. The parties went to Trial, the Trial Court on the basis of the oral and documentary evidence came to a conclusion that the plea of adverse possession propounded by the Plaintiffs cannot be accepted as the ingredients to substantiate the

said plea was lacking in the instant case. The Trial Court was of the view that till the year 1993, the Plaintiffs were not even aware that some portion of the land of the Defendant NO.1 was in their occupation and in the said circumstances the Trial Court was of the view that the Plaintiffs have failed to substantiate that they were holding the land of Defendant No.1 knowingly and adversely to the title of the Defendant No.1.

7. In so far as the demolition of the Plaintiffs structures are concerned, the Trial Court held that since the Respondent No.2 Plaining Authority had demolished the structures to carry out the work of road widening, and since the Plaintiffs had erected the said structure without the permission of Respondent No.2, the Commissioner of Respondent NO.2 Municipal Corporation was within his rights under section 203 and 205 of the B.P.M.C.Act, demolish the said structure and carry

out the work of road widening. The Trial Court therefore dismissed the suit by its Judgment and order dated 27th February, 2003.

8. Aggrieved by the dismissal of the said suit, the Plaintiffs filed Regular Civil Appeal No.48 of 2003. The Lower Appellate Court confirmed the findings of the Trial Court so far as the plea of adverse possession propounded by the Plaintiffs. As also the case of the Plaintiffs that Respondent No.2 had not followed the procedure under the B.P.M.C.Act prior to the demolition of the Plaintiffs structure. The Lower Appellate Court taking into consideration the oral and documentary evidence confirmed the findings of the Trial Court in so far as the adverse possession is concerned and held that the case of the Plaintiffs that they were in possession of the land of Defendant No.1 since 1965 which possession was hostile to the title of Defendant No.1 cannot be accepted.

9. The Lower Appellate Court also came to a conclusion that the evidence on record was totally inadequate to warrant a finding that the procedure under the B.P.M.C.Act was not followed by Respondent No.2 in demolishing the structures.

10. Having considered the rival contentions and having also considered the findings of fact concurrently recorded by both the Courts below, in my view, the challenge raised in the Second Appeal does not involve any substantial question of law.

11. The Second Appeal is, accordingly, dismissed.

12. In view of the dismissal of the Second Appeal, the Civil Application No.12 of 2005 does not survive and is disposed of as such.

[R.M.SAVANT, J.]